

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA)	
)	
v.)	Crim. No. 01-455-A
)	Hon. Leonie M. Brinkema
ZACARIAS MOUSSAOUI)	

GOVERNMENT'S MOTION FOR A PROTECTIVE ORDER

The United States submits herewith a proposed protective order for particularly sensitive discovery materials and moves that the Court enter the proposed order.

At the closed hearing on August 29, 2002, the Court directed the United States to revise the Protective Order for Unclassified but Sensitive Materials, entered February 5, 2002 (docket #64), and in particular to simplify that order by limiting its coverage to one category of materials, those that were particularly sensitive. (Tr. at 23-24.) The Court further ordered the government to consult with defense counsel, and the *pro se* defendant, in revising the protective order. Orders of August 29 and September 4, 2002 (docket ## 465 & 474). We have now done so,¹ and submit the attached proposed protective order.

The government is authorized to represent to the Court that standby counsel have no objection to this proposed protective order. We have not heard from defendant on this topic since September 11, 2002, and cannot report his present position.

In response to the Court's concerns and comments submitted by both standby counsel and

¹ The government transmitted proposed drafts to standby counsel on August 29, and to standby counsel and defendant on September 9, 13, 18, and 25, 2002; we received responsive written comments or drafts from defendant on September 11, 2002, and from standby counsel on September 3, 11, and 23, 2002. We had several telephone conversations with standby counsel as well.

defendant, we have simplified the operation of the proposed protective order. First, by its terms the proposed protective order does not apply to unclassified discovery material that is not designated Particularly Sensitive Discovery Material (“PSDM”) (which was known as “general discovery material” under the February 5, 2002 order), nor to classified materials. Second, the proposed order allows dissemination of PSDM to expert and summary witnesses without the necessity of standby counsel submitting any clearance request to the Court. Third, we have added a provision allowing limited disclosure of certain PSDM to prospective witnesses who are neither expert nor summary witnesses, again without the need for judicial clearance of the disclosure. Thus, the need to utilize the clearance process should be significantly less than under the protective order of February 5, 2002, although it has been retained for other disseminations of PSDM.

We have also added a provision to the effect that if the government introduces, quotes or publicly uses PSDM at trial, or during other authorized use, the material loses that designation, as well as one to the effect that the protective order does not preclude the introduction of otherwise admissible PSDM or proper quotation from it at trial, provided that defendant and standby counsel provide the government with an opportunity to object to public disclosure of PSDM before such attempted introduction.

Finally, in response to an argument by standby counsel that “technically” there are no discovery materials designated as particularly sensitive under the original order, though they have endeavored to honor those designations, we have added language that treats the designation of such materials. We believe that defense counsel’s agreement – indeed preference – to accept discovery material in electronic rather than paper form functioned as an effective modification of

the protective order. In any event, the proposed protective order contains language governing previously-produced PSDM as well as the marking of PSDM produced after the date of this order.²

WHEREFORE, the United States respectfully requests that the attached proposed Protective Order for Particularly Sensitive but Unclassified Discovery Material be entered.

September 25, 2002

Respectfully Submitted,

Paul J. McNulty
United States Attorney

By: _____/s/
Robert A. Spencer
Kenneth M. Karas
David J. Novak
Assistant United States Attorneys
John W. Van Lonkhuyzen
Trial Attorney, Department of Justice

² We wish to advise the Court that the government is exploring with the FBI whether there are some materials or whole categories of materials for which the PSDM designation may be withdrawn. In particular, we are exploring withdrawing the designation for as many previously designated 302s as possible.

CERTIFICATE OF SERVICE

I certify that on September 25, 2002, a copy of the foregoing Government's Response was sent by hand delivery, via the United States Marshal's Service to:

Zacarias Moussaoui
Alexandria Detention Center
2001 Mill Road
Alexandria, Virginia 22314

I further certify that on the same day a copy of the same attached pleading was sent by facsimile and regular mail to:

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_____/s/
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